

# "Germany should take up a leadership role towards a global solidarity system of refugee protection"

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Maximilian Steinbeis , James C. Hathaway Di 19 Mai 2015

*The European Union's principal idea how to address the refugee crisis in the Mediterranean Sea is to attack smugglers and seize and destroy their vessels. Does this make any sense at all to you?*

States don't have the right to use force in international areas other than in self-defense or with the authorisation of the UN Security Council. At least, the European Union is seeking the Security Council's authorization, which theoretically, if granted, could make it legal. Does it make any sense? Absolutely not. Smuggling is not the same as trafficking. Trafficking is a nasty business in which people use violence and coercion against people who are on the move across international boundaries. Smuggling is a simple consensual transaction: I pay you, you move me from A to B. It has historically been one of the critical means for safety for people who are actually genuine refugees. No country will grant a visa for people to come and seek asylum. So people by definition have to use smugglers when border controls become complex. And as we have seen in Europe for example, the 200,000 or so Syrian refugees – obvious, genuine refugees under international law – have actually moved here with the aid of smugglers who are now being attacked. That is the only way for them to get here. So, as a matter of principle it makes no sense at all, because what you are doing is cutting off the route to escape which states have agreed to provide by signing the refugee convention.

*And leaving countries like Turkey and Lebanon in the lurch...*

Yes. Of the 4 million refugees from Syria, 3.8 million are still in states adjoining Syria. The 200,000 or so who made it to Europe are around 5% of the total refugee flow, an incredibly small percentage given the level of need and the ability of Europe, financially and otherwise, to provide for them. It is not insignificant, but neither is it a mass flow of any kind.

*Now even Turkey, which has taken in more than 1.8 million Syrian refugees so far, has slammed its doors shut. Is the entire international system of refugee protection in danger?*

This is not the first time it has happened. We have the same thing happening on the other side of the globe where Rohingya refugees are desperately trying to seek entrance in places like Thailand or Malaysia and are being shipped away as well. We have had turn-backs before. The difference here is that the European Union is asking the UN Security Council – I think for the first time ever – to bless a breach of international human rights law. If in fact the Security Council were to approve the EU motion it would be authorizing a system under which force could be used knowingly to prevent people who are refugees from getting the protection they are entitled to. That hasn't happened elsewhere. It is a continuation of a problem we have had for a long time: States motivated by self-interest will often do nasty things to refugees. But asking the United Nations to bless that breach is really something quite novel.

*What about the other parts of the EU programm, such as the quota system the EU Commission has proposed?*

The quota system is not unfair. It is predicated on the idea of helping European states with the 200,000 or so Syrians who have already arrived. If Europe effectively begins acting, as it has done, as a single state for purposes of agreeing on who is a refugee, on what are their rights, then it makes sense to me that they would similarly take it upon themselves to fairly distribute responsibilities as among member states. We can debate about whether the formula is right, whether the criteria are correct, but the idea of looking at relative wealth and capacity to look after refugees and sharing the responsibilities among partner states seems entirely sensible. The only tragedy, I think, is that what Europe is doing is protecting itself. It has offered a paltry 20,000 places to respond to the 3,8 million refugees from Syria who don't have adequate safety where they are. That is a drop in

the bucket, it is tokenism, and it is not worthy of Europe.

*So, they are basically trying to look good instead of trying to contribute to the solution of the Syrian refugee problem?*

Well, it is an effort to show that they are aware that the numbers outside of Europe are significant. But if they actually want to make a meaningful contribution to the problem rather than simply saying that they acknowledge it, then they should double or triple or quadruple that number. We are not in a position to say in Europe that there is any mass influx. 200,000 people spread across the entirety of Europe is a very tiny number. Again, I want to emphasize: We have got 3,8 million Syrians in just three neighboring states all of which are comparatively poor and have relatively unsophisticated protection systems. To suggest that Europe couldn't handle a bit more than 20,000 when 3,8 million are waiting elsewhere would really stretch the point.

*Even those tiny measures are highly controversial within Europe, and some countries, most of all the United Kingdom, have already announced their resistance.*

That opposition is not so much about the 20,000 but about the program to redistribute the 200,000 ...

*... which wouldn't even include the UK ...*

Correct, they have opted out. So, in principal they are maintaining their traditional position that they are leery of being drawn in completely into the transnational European asylum system. I don't think that is going to change. To be frank, though: If you are going to have a common system and agree on a definition, on the rights, on the mechanism, it is only sensible that ultimately begins acting more like a single state in terms of deciding who goes where. The traditional idea in Europe that a refugee had to stay in the country where she arrived basically was a dramatically unfair proposal when it came to countries on the borders, most recently of course Italy and Greece that were the first ports of call, quite literally, for people who have arrived from North Africa. To suggest that just because they are positioned geographically on the southern frontier means that they have to do everything for the entirety of Europe is an absurd proposition. The first country of arrival principle never made any sense at all to me. And you can now see quite easily how ridiculous it becomes in practice. I see this redistribution attempt as a maturing of the European Union, a movement away from the idiocy of the first country of arrival principle, and recognizing that if you actually are going to act like one country you better start acting like one country, meaning that you don't rely on accidents of geography to assign refugee responsibilities.

*In international refugee law, as in all international law, states will always primarily look after their self-interest. Do you see a way to harness that self-interest to improve the system?*

The idea that states should share a common responsibility underlies a proposal that I and more than a 100 other people have developed to actually globalize the protection regime. We would have a common international administration instead of 147 states each doing very expensive asylum determination. We would go back to what we had before 1950 where an international agency quickly and efficiently makes the decision who is a refugee, and states then agree to share among themselves the responsibility to protect the people recognized by the United Nations, some giving protection immediately to vulnerable cases, some providing protection for the duration of risk near the region of origin, and others – probably Europe, North America, Australia etc. – finding a permanent home for the 50% or so of refugees who cannot safely go home in five or six years after a crisis. The point is, to move toward a system of what we call „common but differentiated responsibility“, where all states contribute but states do different jobs, where we don't have the one-size-fits-all model that now characterizes refugee protection.

*Would that require a reform of the refugee convention?*

The best part of this is that we don't even need to amend the refugee convention at all. It always foresaw that states would one day rationalize the way we did protection. The preamble to the convention talks explicitly about doing so. The rights that are in the convention make sense, rights of refugees to pursue self-sufficiency, not to be burdens. The definition of a person being persecuted for being who is or what he believes makes as much sense now as it ever did. What the world needs to do is to get ahead of a refugee crisis, to develop an insurance based

model for assigning protection responsibilities among states and avoid the kind of nonsensical after-the-fact recalculation of who is going to do what that characterizes the current mess with the Syrians. Governments are smart enough to do this. We have done it in many areas like free trade, security etc. We need to take what we have learned in those other areas and move it into the refugee protection regime.

*Who should initiate this kind of change?*

What we need now is some leadership by the UN Refugee Agency, by important states like Germany, to say: enough is enough. The rights in the convention makes sense, the definitions make sense, the way we are doing it makes no sense. And Europe will stand together with the countries in the regions of origin rather than trying to protect itself *from* refugees. And we will have a global solidarity regime that is less expensive, more efficient and more fair. That is where I think we should move.

*How would you make this move attractive to state leaders?*

I think states in the developed world value manageability, predictability, orderliness more than almost anything. And this would give them that. It would end the regime under which a refugee necessarily stays in whatever country she first arrives in. It would break the link between refugee protection and immigration. It would treat refugee status as a human rights remedy. I think that would really be very attractive to many developed governments who want manageability, who don't want to see refugee protection as a disguised immigration program, and I think it would be very attractive to states in the less developed world. They cope with the overwhelming share of refugees with no guarantee of resources or resettlement assistance from the rest of the world. So, there is a self-interest for all states to come together in a regime like this. What we lack is leadership. And that is what I am calling for now. It is time for everyone to actually take a page from the EU book. The EU is now figuring out that until and unless they share out responsibility the regime is arbitrary. Let's just move that to the global level. And states like Germany that have the credibility because of their comparatively generous attitude to asylum should show that leadership. The time is right to do that now, not to wait until the next crisis when we will have to reinvent the wheel yet again. Let's learn the lesson. Let's get on with it.

*How costly would that system change be?*

The economists who worked with us say that it would be dramatically less expensive than what we do now. We are not spending more than 50 Cents a day to look after refugees in the less developed world, whereas we are spending at least 20,000 \$ per asylum seeker just to process them in the developed world. We take the money that is in the system. We get rid of the fancy bells and whistles in the asylum system for the 15% refugees who get formal hearings in the developed world. That would be more than enough to fund the entire global regime at a level that would provide rights for everyone. We don't actually need new money. What we need is a better allocation of current resources.

*What do you say to those who claim that a more effective refugee protection system just gets more attractive for people to use it as a gate for immigration?*

I say that this has always been true. If the governments of the developed world want to deal with the problem of people sometimes abusing the only channel that allows them to migrate, i.e. refugee protection, then they should open up immigration channels. We don't live a world any more where it is enough to be hard-working and ambitious and prepared to sacrifice for your children to get a chance to immigrate. Almost no countries authorize that. They authorize the immigration of super-smart, massively talented or very rich people. And the super-hard-working people like my ancestors when they went to North America are no longer welcome. If you were seeking opportunity for yourself and your children might you consider abusing the only channel available? You bet. That is just human nature, and that is the way it is going to be. If we want to solve that problem then we should get down to doing it. We should have a migration system that is actually about labor migration, that lets people pursue those opportunities. In fact, Europe, North America, Australia all desperately need an infusion of labor for to keep their social support systems in play.

*Is it fair to insinuate that most refugees trying to reach the European shores are actually driven by economic motives?*

If a person is a refugee the fact that she also wants a better life for her children is legally irrelevant. All of the courts have said that. So long as the well-founded fear of being persecuted is one of the central reasons the person is on the move, we have signed a treaty that says she gets protection. We have got to do that and quit making up little stories of the asylum channel being abused to justify nasty action. There is, for example, no basis to argue now that anything remotely approaching more than a tiny minority of Syrians are economic migrants. Most Syrian migrants who have been forced to flee have actually been middle-class or better. They would prefer not to have had to have left relatively good jobs in a relatively good society. It was only when that society was destroyed and when they were targeted because of who they were and what they were thought to believe that they fled. So let's get over this. Let's not mix up the issues. The Syrians are refugees, the UN has said so, our courts have said so. It's time to get on with the business of protecting them and stop mixing this up with the migration debate.

*Questions: Maximilian Steinbeis*

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